STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of PERICE KELVIN POPE, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

UNPUBLISHED
August 21, 2003

V

LAVONNE POPE,

Respondent-Appellant,

and

HARRY HAYNES and JOHN DOE,

Respondents.

No. 246047
Oakland Circuit Court
Family Division
LC No. 01-651125-NA

Before: Markey, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Respondent-appellant appeals by right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

This child came to the attention of the Family Independence Agency in February 2001. The minor child had recently been returned to respondent-appellant. The child's maternal aunt and uncle had been his guardians while respondent-appellant was in the military. After the guardianship was terminated, respondent-appellant and the minor child went to a motel, where they stayed in a room with a man. Respondent-appellant admitted that the minor child missed some school during this time. After several weeks, with the consent of respondent-appellant, the minor child returned to live with his uncle and aunt. The evidence further indicated that respondent-appellant had a long history of drug use and instability. She had lived in many places, and her family members often did not know the whereabouts of the minor child. According to the testimony, the minor child had attended eight schools by age nine. During the pendency of the case, respondent-appellant tested positive on four drug screens, one for alcohol in October 2001, one for marijuana and cocaine in February 2002, and two for marijuana in February 2002. She obtained an efficiency apartment in February 2002 but had no stable

housing before then. Respondent-appellant 's visits with the minor child were sporadic and inconsistent.

The trial court did not clearly err by finding that the statutory grounds for termination were established by clear and convincing evidence. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The principal conditions that led to the adjudication were respondent-appellant's long standing drug problem and her lack of stable and suitable housing. The multiple positive drug screens proven that respondent-appellant had not successfully addressed her drug problem. Moreover, the efficiency apartment that respondent-appellant obtained in February 2002 was not adequate housing for both respondent-appellant and the minor child. The trial court did not clearly err by terminating respondent-appellant 's parental rights under MCL 712A.19b(3)(c)(i).

The trial court also did not err by finding that the grounds set forth in MCL712A.19b(3)(g) and (j) were established by clear and convincing evidence. Respondent-appellant has a long history of drug use and instability. This pattern continued while the minor child was a temporary ward of the state. Respondent-appellant had multiple positive drug screens, only six pay stubs in a period of approximately seventeen months, no stable housing until February 2002, and, perhaps most importantly, was inconsistent and sporadic in visiting the minor child. The evidence offered little hope that respondent-appellant will become stable within a reasonable time considering the age of the minor child.

The evidence also did not show that termination was clearly contrary to the best interests of the child. We note especially the guardian ad litem's observation that the minor child becomes more profoundly disappointed each time his hopes that this mother will turn her life around are dashed. However, he has done extremely well in the care of his uncle and aunt, winning scholastic awards and even being elected president of his class. The child needs permanency and stability, which respondent-appellant remains unable to provide.

Respondent-appellant also argues on appeal that she was denied procedural due process by the trial court's refusal to grant an adjournment for a best interests hearing when respondent-appellant failed to appear. Respondent-appellant provided no reason for her failure to appear at the hearing. Her due process claim is considerably weakened by the fact that respondent-appellant was present at the permanent wardship hearing where the court determined that the statutory grounds for termination were established. The evidence did not present a close case. Furthermore, respondent-appellant was represented by counsel at the best interests hearing, and indeed her attorney placed in evidence a reference letter. MCR 5.973(A)(3)(b) and (c),[1] relating to the dispositional phase of protective proceedings, state that "[t]he respondent has the right to be present *or may appear through legal counsel"* and that "the court may proceed in the absence of parties provided that proper notice has been given." MCR 5.974,[2] relating to termination proceedings, does not require the presence of the respondent and merely states that "notice must

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[1] Effective May 1, 2003, the court rules governing proceedings regarding juveniles were amended and moved to the new MCR subchapter 3.900. The provisions in former MCR 5.973(A)(b) and (c) cited above are now found in MCR 3.973(D)(2) and (3). In this opinion, we refer to the rules in effect at the time of the order terminating parental rights.

[2] The comparable provision is now found in MCR 3.977(C).

be given as provided in MCR 5.920 and MCR 5.921(B)(3)." Respondent-appellant does not contend that she did not have notice of the best interests hearing and indeed was present at the permanent wardship hearing when the date and time for the best interests hearing were set.. It appears unlikely respondent-appellant's absence, increased the risk of an erroneous deprivation, especially considering the pattern of instability she exhibited throughout the time the minor child was in care and also considering her failure to complete the court ordered psychological exam following the permanent wardship hearing.

Under these circumstances, we conclude that respondent-appellant was not denied procedural due process by the trial court's refusal to grant an adjournment when she did not appear for the best interests hearing.

We affirm.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Henry William Saad